

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-216408.2 **DATE:** June 5, 1985
MATTER OF: Technical Services Corporation

DIGEST:

1. Where protester does not learn of specific grounds of protest until agency debriefing, a protest filed within 10 working days after the debriefing is timely.
2. While discussions must be meaningful, negotiations that lead offerors into the areas of their proposals which require amplification meet this criterion. The content and extent of meaningful discussions in a given procurement are matters primarily for determination by the agency, and GAO will not question such a determination unless it is clearly without a reasonable basis.
3. GAO will not reevaluate proposals, but rather limits its review to an examination of whether the agency's evaluation was reasonable and in accord with listed criteria.
4. When a solicitation states that award will be made to the offeror whose proposal offers the greatest value in terms of technical capability and cost, rather than the offeror with the lowest estimated cost, cost may become the determinative factor when there are close technical scores.
5. GAO denies a protest alleging that a cost realism analysis was inadequate because the agency failed to consider the fact that the awardee would be required to pay its employees at the same rates as the predecessor contractor, since the Service Contract Act does not require a successor contractor to do so in the absence of a collective bargaining agreement.

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6. Although agency's initial cost realism analysis allegedly was deficient, when the results of a second analysis, performed after the protest was filed, do not change the protester's competitive standing in relation to the awardee, the protester has not been prejudiced. GAO therefore denies a protest against an allegedly improper cost evaluation.

Technical Services Corporation protests the award of a contract to TECOM, Inc., under request for proposals (RFP) No. EME-84-R-0058, issued by the Federal Emergency Management Agency (FEMA) for operation and maintenance of the National Emergency Training Center, Emmitsburg, Maryland. Technical Services, the incumbent contractor, contends that discussions were inadequate and that, contrary to the RFP, award was made on the basis of lowest offered price. Additionally, the protester asserts that FEMA's cost realism analysis was inadequate because it failed to consider the fact that the successful contractor would be required to pay its employees at the "conformed" rates applicable to Technical Services' contract.^{1/} We deny the protest.

The RFP contemplated a 1-year, cost-plus-fixed-fee contract with 2 option years. It provided for evaluation of proposals by a Source Evaluation Board, based on described technical and cost factors that were accorded the following weights:

^{1/} Under regulations implementing the Service Contract Act of 1965, 41 U.S.C. § 351 et seq. (1982), the minimum wages and fringe benefits of service employees who are not within the classes established by the Department of Labor wage determination applicable to a particular contract must be "conformed" so that there is a reasonable relationship between the unlisted and the listed classes. See 29 C.F.R. § 4.6(b)(2)(i)(1984).

<u>Technical</u>	<u>Maximum Scores</u>
1. Approach	
a. Organization	15
b. Processing and Control of work	10
c. Management Information System	10
2. Staffing Plan/Key Personnel	25
3. Company Experience	15
<u>Cost including cost realism</u>	<u>25</u>
Total	100

The RFP provided that award would be made to the offeror whose proposal offered the greatest value to the government in terms of technical capability and cost, rather than to the offeror with the lowest estimated cost; however, it specifically stated that the importance of cost in relation to the other evaluation factors would increase with the equality of the proposals.

Twelve proposals were submitted, and FEMA determined that four, including those submitted by Technical Services and TECOM, were within the competitive range. For technical factors, TECOM initially ranked first with 65.3 points, while Technical Services ranked third with 63.1. Discussions took the form of written questions and answers and, after reviewing best and final offers, the Source Evaluation Board unanimously agreed that the overall ranking and scoring of the proposals had not changed. After cost proposals were reviewed for cost realism, TECOM had the lowest cost (\$3,192,334, adjusted to \$3,316,746 for cost realism) and the highest technical score. Its final combined score was 90.3, compared with Technical Services' score of 82.8 (based on an evaluated cost of \$4,048,575). FEMA awarded the contract to TECOM on October 5, 1984.

Responding to the protest, FEMA argues that it is untimely because it was not filed until October 29, more than 10 days after award. However, it is well settled that a protester may delay the filing of its protest until after a debriefing when the information available earlier left uncertain whether there was any basis for protest. Trellclean, U.S.A., Inc., B-213227.2, June 25, 1984, 84-1 CPD ¶ 661. Here, the debriefing was held on October 15,

and arguably it was only at that time that Technical Services became aware of the alleged inadequacy of discussions, failure to make award in accordance with the RFP, and inadequacy of the cost realism analysis. Since the firm filed its protest with our Office exactly 10 working days after the debriefing, we will consider these three bases of protest. We will not consider whether FEMA improperly failed to incorporate the "conformed" rates of the predecessor contractor into the RFP, since Technical Services complained of this to the agency, but did not specifically protest on this basis to our Office. In any event, a protest concerning this alleged solicitation deficiency would have had to be filed before closing date for receipt of initial proposals. 4 C.F.R. § 21.2(b)(1) (1984).

Technical Services' first contention, that discussions were inadequate, is based on FEMA's alleged failure to notify it of the perceived weakness of its proposal in the management information area. In its written questions to the firm, FEMA asked: "How long do you anticipate it will take for your management information system to be totally operational and providing meaningful reports? Will the system be computerized?" The firm complains that this was not sufficient to direct its attention to the area of its proposal in need of amplification or clarification. Technical Services argues that its response, i.e., a statement that the system was operational "today" and an offer to permit members of the Source Evaluation Board to witness the system in operation, was more than adequate. In addition, the firm supplied members of the Board with copies of computerized "meaningful reports." Technical Services concludes that if the Board had further questions, it should have conducted a second round of discussions.

FEMA, however, contends that its questions were based on the Board's evaluation summary, which stated:

"The proposer appears to be going through a major effort to develop a work processing and management information system [MIS] that will meet the need of control and visibility of work effort. However, the proposed computerized work processing and MIS are in the development process and

the testing will be performed on this project. It may require significant time and effort to make the system workable at the NETC [National Emergency Training Center]."

FEMA further argues that different questions would have led or coached the protester toward a desirable management and operational approach, as well as potentially prejudicing the rights of competitors by technical transfusion or leveling.

Meaningful discussions, either oral or written, are generally required in federal procurement. In these discussions, the contracting agency must furnish offerors information concerning deficiencies in their proposals and give them an opportunity for revision. However, the content and extent of discussions necessary to satisfy the requirement for meaningful discussions are matters of judgment, primarily for determination by procuring officials, and are not subject to question by our Office unless shown to be clearly without a reasonable basis. Trellclean, U.S.A., Inc., B-213227.2, supra, 84-1 CPD ¶ 661. We have rejected the notion that agencies are obligated to afford offerors all-encompassing negotiations. All that is necessary is that the agency lead offerors into the areas of their proposals that require amplification. Id.

From the record in this case we think that the content and extent of discussions by FEMA were reasonable. The written questions clearly led Technical Services into the area of its management information system and conveyed FEMA's doubts as to the extent to which that system was operational. The protester seems to be objecting to the fact that after receiving its response, the agency did not ask further questions about its management information system or require Source Evaluation Board members to witness it in operation. However, an agency is not required to help an offeror along through a series of negotiations so as to improve its technical rating until it equals that of other offerors. Decilog, Inc., B-206901, April 5, 1983, 83-1 CPD ¶ 356.

Underlying this basis of protest appears to be Technical Services' belief that its initial technical proposal was adequate in the management information system area. However, it is not the function of our Office to reevaluate proposals. Rather, we will limit our review to an examination of whether the procuring agency's evaluation was reasonable. Trellclean, U.S.A. Inc., B-213227.2, supra, 84-1 CPD ¶ 661. While the protester contends that its proposal was not properly read, based on our in camera review of the proposals and the Board's raw evaluation sheets, we cannot say that the evaluation in this case was unreasonable.

Second, Technical Services argues that FEMA did not base the award on the criteria set forth in the RFP. The protester contends that at the debriefing, procuring officials stated that award was made to the lowest offeror within the acceptable technical range. According to Technical Services, this is not consistent with the RFP statement that award would be made to the offeror whose proposal offered the greatest value in the terms of technical capability and cost, rather than the lowest estimated cost.

Contrary to the protester's assertions, there is no indication that award to TECOM was made solely on the basis of lowest estimated cost. The evaluation formula set forth in the RFP accorded cost only 25 of 100 points, but warned that cost could become a determinative factor in the case of closely ranked technical proposals. We cannot conclude that the award was not in accord with the RFP, since TECOM's lower cost and higher technical point score gave it the highest overall rating, and thus it offered the greatest value to the government. We therefore find this basis of protest without legal merit.

It also appears to be Technical Services' belief that TECOM will not be able to perform at its offered price. However, as the protester acknowledges, whether TECOM will be able to provide the required services at the price it offered is a matter of responsibility, which our Office does not generally review unless the protester shows either possible fraud or bad faith on the part of procuring officials. Oceanprobe, B-215389, Sept. 4, 1984, 84-2 CPD ¶ 248. Neither has been alleged here.

Finally, Technical Services alleges that FEMA's cost evaluation was inadequate because in considering cost realism, the agency failed to consider the fact that the successor contractor will be required, under the Service Contract Act, 41 U.S.C. § 351 et seq. (1982), to pay its employees at the "conformed" rates applicable to Technical Services' contract. According to the protester, this deficiency in the cost realism analysis placed it, as the incumbent contractor, at a competitive disadvantage.

There is no dispute that the contract awarded to TECOM is subject to the Service Contract Act. However, as FEMA points out, under the Act a successor contractor is bound by the predecessor contractor's compensation levels only where they are established by a collective bargaining agreement. J. L. Associates, Inc., B-201331.2, Feb. 1, 1982, 82-1 CPD ¶ 99. Here, there is no indication that the wages paid by Technical Services were the result of a collective bargaining agreement. The agency specifically states that there was no agreement, and Technical Services, in its cost proposal, stated that its employees had received increases above the minimums specified in the Department of Labor wage determination for performing as shop leaders and other merit considerations. We therefore cannot conclude that, under the Service Contract Act, TECOM would be required to pay the conformed wages paid by Technical Services.

To the limited extent that TECOM also proposed to use employees in classes that were not listed in the wage rate determination applicable to its contract, it also would have been required to conform their wages and fringe benefits under the procedures set forth in Department of Labor regulations. However, this would have been accomplished by means of a new agreement between TECOM, the affected employees, and the contracting agency, with the Department of Labor making a determination if no agreement had been reached. See 29 C.F.R. § 4.6(b)(2) (i-iv).

Although it is not clear from the record whether FEMA considered this in its initial cost realism analysis, the agency performed a second analysis after submission of the protest. It shows that even if, as Technical Services' suggests, its own direct labor and labor overhead costs were applied to TECOM, Technical Services' proposed costs

would exceed TECOM's by more than \$290,000. Thus, Technical Services was not prejudiced by the allegedly deficient initial cost evaluation.

Generally, it is not our policy to disturb a cost realism analysis unless it clearly lacks a reasonable basis. Raytheon Service Co., et al., 59 Comp. Gen. 316, 325, (1980) 80-1 CPD ¶ 214. Under the circumstances outlined above, we find that FEMA's cost realism analysis was reasonable.

The protest is denied.

for *Seymour Efron*
Harry R. Van Cleave
General Counsel